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December 9, 1998

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Mr. F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket  
Federal Election Commission  
999 E Street N.W.  
Washington, D.C. 20463

Re: MUR 4856

Dear Mr. Turley:

The New York Republican State Committee's complaint against Schumer '98, a principal campaign committee, the Liberal Party of New York State, a state party committee,<sup>1</sup> and the Independence Party of New York, a state party committee,<sup>2</sup> regarding lawful 441a(d) coordinated party expenditures made by the Liberal Party and the Independence Party on behalf of their general election candidate, the Honorable Charles Schumer, is without merit and should be dismissed for the reasons presented herein.

The NYRSC alleges in their complaint that only one party is permitted to make 441a(d) expenditures on behalf of a candidate for federal office. There is no support for this limit in the Federal Election Campaign Act of 1971, as amended (the "Act"), Federal Election Commission (the "FEC") regulations, or in the Advisory Opinions cited by the NYRSC. Contrary to this assertion, the Act and FEC regulations specifically permit each state party committee to make 441a(d) coordinated party expenditures in connection with the general election campaigns of the party's nominees for federal office. 2 U.S.C. 441a(d); 11 CFR 110.7(b)(1). In addition, such coordinated party expenditures are not contributions to a candidate and, therefore, they do not count against any candidate contribution limits, pursuant to 2 U.S.C. 441a(d) which states:

(1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the

<sup>1</sup> FEC Advisory Opinion 1976-95. The Commission determined that the Liberal Party was a State party, but not a national political party.

<sup>2</sup> FEC AO 1998-2.

national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office...

Each state party committee has its own separate spending limit for that party's U.S. House and U.S. Senate nominees in a particular state pursuant to 11 CFR 110.7(b)(1) which provides:

The national committee of a political party, and a State committee of a political party, including any subordinate committee of a State committee, may each make expenditures in connection with the general election campaign of a candidate for Federal office in that State who is affiliated with the party.

The Act and FEC regulations give each separate state party committee the right to make 441a(d) expenditures on behalf of its nominees for federal office. Accordingly, the Liberal Party and the Independence Party may each make such expenditures on behalf of each party's designee for the U.S. Senate. In 1998, the 441a(d) coordinated party expenditure limit in New York for a state party committee to spend in connection with the general election campaign of its U.S. Senate candidate was \$883,863.

Pursuant to New York state law, in June 1998 Congressman Schumer was separately designated as the U.S. Senate candidate by the Liberal Party and the Independence Party. On September 15, 1998 Congressman Schumer won the Democratic Party primary for U.S. Senate. As a result of the party designations and primary victory, Congressman Schumer's name properly appeared three times on the November 3, 1998 general election ballot as the U.S. Senate candidate for the Democratic Party, the Liberal Party and the Independence Party.

The Liberal Party and the Independence Party made permissible 441a(d) coordinated party expenditures on behalf of their U.S. Senate candidate, Congressman Schumer, but neither party exceeded the \$883,863 limit for such expenditures. In 1998, the Liberal Party spent \$560,500 in 441a(d) expenditures on behalf of its candidate for the U.S. Senate and the Independence Party spent \$439,700 in 441a(d) expenditures on behalf of its candidate for that office.

In their complaint, the NYRSC has confused permissible state party committee 441a(d) expenditures on behalf of its nominee with contributions to a candidate. The Act and FEC regulations give each separate state party committee the right to make 441a(d) expenditures on behalf of that party's nominee for a particular office in that state. Such expenditures are not contributions to the candidate.

In support of their complaint, the NYRSC cites two FEC Advisory Opinions regarding candidate contribution limits that simply do not apply to this matter. FEC AO 1982-47 and 1990-29. In each of these advisory opinion requests, a republican candidate for Congress argued that

one individual should be permitted to contribute three times the individual contribution limit of \$1,000 to a single candidate because that candidate's name appeared on the New York ballot three times for the same office. The candidates were proposing that one individual should be permitted to contribute \$3,000 per election to a candidate for one federal office. The Commission flatly rejected this proposal. The individual contribution limit is \$1,000 per candidate, per election, therefore, an individual may contribute no more than \$1,000 to a federal candidate for one office, no matter how many times that candidate's name appears on the ballot.

In this matter, neither the Liberal Party nor the Independence Party spent more in 441a(d) coordinated party expenditures than they had the right to spend under the Act on behalf of each party's candidate for the U.S. Senate. Moreover, the Act and FEC regulations specifically provide that such expenditures made by each state party committee are not contributions to a candidate.

In sum, the Liberal Party made permissible 441a(d) expenditures within the New York limit on behalf of its candidate for the U.S. Senate, Congressman Schumer; the Independence Party made 441a(d) expenditures on behalf of its candidate for U.S. Senate, Congressman Schumer, that it also had the right to make under the Act; neither state party committee exceeded its \$883,863 limit for such expenditures; and Schumer '98 did not receive an excessive contribution from either state party committee. Accordingly, the complaint filed by the NYRSC should be dismissed immediately and no further action should be taken against Schumer '98, the Liberal Party or the Independence Party.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

  
Lyn Utrecht

cc: Mr. Steven D. Goldenkranz, Schumer '98  
Ms. Anne Peskin, Liberal Party of New York State  
Ms. Laureen Oliver, Independence Party of New York